The communal nature of the judicial systems in early medieval Norway[1]

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The aim of this article is to demonstrate the significance of the communal elements present in the judicial systems in early medieval Norway, elements that have hitherto been almost completely ignored by scholars. The expression 'communal nature' is used in order to highlight two different aspects of this: the communal legal responsibility as well as the communal judicial procedure. The study will focus on the three earliest Norwegian laws; i.e. the older laws of the Gulathing and the Frostathing, as well as the Law of King Magnus Lagabøter ('Lawmender').[2] The majority of the regulations included in this study concern the thing organisation and 'personal rights'.[3]

Introduction

Previous research regarding the communal and individual aspects of pre-Christian and early medieval society has to great extent focused of the emergence of the individual, particularly in connection to state formation in Norway.[4] These issues will thus be only partly considered in this article. The main focus will instead be placed on the communal elements, which were present in many significant aspects, such as the issuing of verdicts and the concepts of guilt and punishment. As pointed out by other scholars, the degree and frequency of these elements were gradually reduced over time. The clearest break is seen in the Law of King Magnus Lagabøter. By this time, the position of the king had grown strong enough for him to take charge of the

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[2] The older laws of the Borgarthing and the Eidsivathing are not used in this article, since only the ecclesiastical regulations are still extant.

[3] Larson 1935: 120-49, 222-24 and 257-82; Taranger 1962: 5-16 and 43-71.

[4] Sigurðsson 1999: 137-39 and 178-80; Bagge 2001b: 366-70; cf. Berge 2002: 47.

legal system.[5] It was therefore not until this time, i.e. nearly 300 years after the introduction of Christianity, that a judicial system almost fully based on the decisions and actions of individuals had emerged. It must on the other hand be emphasised that there is very little evidence to show whether the regulations in these laws were actually enforced. It can however be argued that the judicial system reflected the contemporary thinking in society.

The nature of the Norwegian provincial laws

Before going into the details of the changing judicial systems, the nature of the laws themselves needs to be discussed. This is likely to be common knowledge for readers familiar with the Scandinavian languages. However, for the benefit of those readers who are not, a brief outline of the origin and dating of the early Norwegian medieval laws will here be given. This is of particular importance as these topics have been subject to much debate over time. For the purposes of this article, it will suffice to provide an approximate date for when the extant laws were written down and to show that they contain regulations from various time periods. It is clear that the year of the manuscripts cannot be used to date either the individual regulations or the law as a whole.[6]

The Law of the Gulathing has survived in a number of manuscripts. The oldest complete version is the so-called *Codex Rantzovianus,* which has been dated to c. 1250.[7] Parts of this law have also been found in three older fragments. All scholars agree that these three fragments date from before 1250. The single regulations seem to derive from a rather wide time-span. Martina Stein-Wilkeshuis has compared three tenth-century treaties between the Rus and the Greek described in the Nestor's Chronicle and found that certain practices have 'direct counterparts' in early Nordic provincial laws. Stefan Brink has pointed out that if this interpretation is correct, it

[5] Bøe 1966; Helle 2001: 155-56. The communal elements have only so far only been briefly discussed, see e.g. Sigurðsson 1999: 137-38; Bagge 2001b: 366-70. Steinar Imsen has drawn attention to the 'communal rule' and 'communalism' of the *bøndr* from the time of Magnus Lagabøter onwards. Imsen defined communalism as 'institutionalised interaction in the local community in the solving of public tasks'. This definition does not include the undertakings of every day life, but rather the 'public matters in rural society' such as the organisation of justice and defence. According to Imsen, most references to this type of communalism stems from end of the 13th century and in particular the Law of King Magnus Lagabøter. Imsen views communalism as something new, even if some of these elements stem from earlier times. Imsen 1990: 23-27 and 205-06.

[6] Fenger 1979, 1981 and 1987; Norseng 1991; Sjöholm 1988; Sanmark 2004: 133-46.

[7] Helle 2001: 11-13; B. Eithun *et al*. 1994: 11-26; Helle 1995: 18; Larson 1935: 28-29.

is possible to trace elements in these laws 'back to as early as *c*. 900 AD'.[8] Anne Irene Riisøy has furthermore argued that some of the laws concerning women's sexuality included in the ecclesiastical regulations in the Norwegian provincial laws may date back to the Viking Age.[9]

Other regulations in the Law of the Gulathing seem to date from the eleventh and twelfth centuries. In extant versions of this law, some sections are attributed to 'Olav', some to 'Magnus', and some to 'both', i.e. Olav and Magnus. 'Magnus' is seen to refer to King Magnus Erlingsson (1161-84), who revised the Gulathing law, presumably in 1163/64. Knut Helle has, through comparative studies, identified some of the chapters that most likely were introduced at this time.[10] Most scholars agree that 'Olav' refers to King Olav Haraldsson (Olav the Holy, 1016-30). The division of the text into sections attributed to 'Olav' and 'Magnus' respectively was most likely a result of the 1163/64 revision. By this time, it had become necessary to distinguish between the regulations introduced by the two kings. Although it seems clear that Olav Haraldsson did introduce some of the regulations attributed to 'Olav', he probably did not issue all of these. Knut Helle has thus argued that the only certain thing that can be said is that they must predate King Magnus' revision.[11] Thus, many regulations in the Law of the Gulathing seem to date from either before, or around, 1163/64. It must however be kept in mind that the oldest complete extant manuscript, the *Codex Rantzovianus*, has been dated to c. 1250 and that, up to this time, further additions and changes will most likely have been made.

The Law of the Frostathing has survived in a number of manuscripts from the fourteenth century. The earliest one has been dated to the time before 1350. Jan Rag-

[8] Brink 2002: 99; Brink 2003: 76; Stein-Wilkeshuis 1998.

[9] Riisøy 2003: esp. 168.

[10] F V 44-46, G 2 and 32; Helle 1972: 120-21; Helle 2001: 17-20; Knudsen 1960b; Helle 1974: 62-63.

[11] In the 1160s, Olav Haraldsson already started to be seen as a saintly king, and also began to be identified with 'everything good in older Norwegian law'. It would therefore not be surprising if other laws than his own were attributed to him. Chapters 10, 15, and 17 claim to have been introduced by King Olav Haraldsson and Bishop Grímkell at the thing of Moster (i.e. in the 1020s). It is important to point out that several other chapters than those attributed to Olav Haraldsson and Bishop Grímkell are marked 'Olav'. Helle 2001: 17-20; Helle 1997: 240; Knudsen 1960b; Maurer 1872: 56 and 63-64. Scholars have dated many of the chapters in these laws on the basis of e.g. comparative and linguistic evidence. For further details, see Sanmark 2004, chapters 4-7.

nar Hagland and Jørn Sandnes argued that the extant version of the Frostathing Law dates from the 1260s. The dating of the regulations in this law causes some particular problems. The existing version makes it clear that it is based on an older version, presumably a law named *Grágás,* which is mentioned in King Sverrir's Saga. According to this saga, which dates from the early thirteenth century, King Magnus Olavsson (1035-47) ordered that *Grágás* should be written down. We are also told that King Sverrir (1177-1202) referred to this law in his struggle against Archbishop Eirik around 1190. Eirik, on the other hand, is reported to have followed another book, named *Gullfjöðr*, which had been put together by Archbishop Øystein (1161-88). The date of *Grágás* has been much debated. Hagland and Sandnes have however argued that it must have existed, at the latest, in the twelfth century.[12]

The Law of King Magnus Lagabøter was accepted as law in the middle of the 1270s. It was issued in four editions, one for each of the law things.[13] The oldest surviving manuscript dates from the end of the thirteenth century. There is also a number of manuscripts from the first half of the fourteenth century.[14]

To sum up, it is clear that the three laws discussed above represent three different stages of the development of law over time. The Law of the Gulathing represents the oldest phase, the Frostathing law the intermediate stage, while the latest phase is represented by the Law of King Magnus Lagabøter. It is in this chronological order that the laws will be dealt with in this article.

Previous research regarding the individual and the family

The reasons why many scholars have focused on the emergence of the individual must now be considered. The roots to this lie in the works of scholars from the late nineteenth century to the end of the 1970s. During this time it was argued that Norse Iron Age society was based around a patrilinear 'clan-based' kinship system, which was seen to penetrate all aspects of life and society. When adherents of this school discussed early Christian society, the assumed 'clan-based' society was juxtaposed to the single elements in the written sources, above all in the provincial laws. The at-

[12] Hagland and Sandnes 1994: ix-xi and xxxxiii-xli; Indrebø 1920: chapters 112 and 117; Knudsen 1959b: 656-57 and 1960c.

[13] The dates provided by the different manuscripts vary between 1274 and 1276. Bøe 1966: 233.

[14] Bøe 1966; Helle 2001: 11.

tention paid to these elements, which indisputably are there, has led to a partial neglect of the continued presence of communal elements in the laws.[15]

Today, most scholars argue that the kinship system in Norse Iron Age society was not based around clans. One such scholar is David Gaunt, who carried out a study of Nordic provincial laws, Icelandic sagas and comparative anthropological evidence. Gaunt found no evidence of a clan-based kinship system in the Nordic written sources, and demonstrated that this idea had instead been introduced by nineteenth-century scholars. He concluded that Norse society was based around nuclear families rather than extended families or clans. Gaunt also argued that the kinship system was not patrilinear, but bilateral, i.e. a person belonged to her/his mother's family to the same extent as her/his father's family.[16] Torben Anders Vestergaard, who carried out an anthropological kinship analysis based on early Norwegian laws, has moreover argued for the existence of a minimal *ætt* fellowship, which for each individual included five generations. He stated that 'the relations between unrelated minimal *ættir* are generally defined as relations belonging to the same society, where all subscribe to the same law and general codes of conduct but specifically they are only negatively defined as absence of any particular relationship; they are open relations of potential alliance or hostility. Relationships between minimal *ættir* result from choice and actions'.[17]

If we accept these arguments, it means that regulations that have previously been seen to relate to whole clans instead concerned nuclear families only. Some of the

[15] Evidence for this was first found in written sources. In the 1950s, archaeologists began supporting the idea of a patrilinear clan-based society. This was due to the finds of very large houses dating from the Early Iron Age in south-western Norway. The sizes of the houses were seen to suggest that extended families had been living under the same roof, a manner which was seen as the 'traditional' way of living. Hagen 1953: 156-59; Johnsen 1948: esp. 60-98 and 119-38; Gaunt 1983, 186-210; Stjernquist 1983; Granlund 1972; Hamre 1976.

[16] Gaunt 1983: 186-210. Christer Winberg has come to similar conclusions regarding Sweden. Winberg 1985: esp. 17-30. See also Widgren 1986: 18-19; Widgren 1995: 5-6. Archaeologists have moreover now demonstrated that not all parts of the large Early Iron Age buildings were used for living in, and that it is therefore unlikely that these buildings accommodated more than ten people. The current consensus seems to be that clan-based ownership was not very common and that farms based around nuclear families date back to the Early Iron Age. Widgren 1995: 5-6; Widgren 1986: 19-21; Edgren and Herschend 1982; Carlsson 1979. Lars Ivar Hansen has moreover argued that the strengthening of the patrilinear elements seen in the oldest Norwegian provincial laws formed part of a move by the traditional aristocracy to 'keep the patrimony together', as the old system was now under threat by growing power of the church and the monarchy. Hansen 1994: 133-45 and 153.

[17] Vestergaard 1988: esp. 179-80; cf. Hansen 1994: 129-33.

most well-known examples are the regulations concerning the blood feud and inheritance of *odal* land.[18] These types of regulations will not be included in this article. They are however worth mentioning, as they provide examples of communal elements in the laws, even though these may have consisted of fewer people than previously believed.

The communal elements that will be discussed in this article are different in the sense that they are not based on kinship. They are instead, to a great extent, decided by status in society and even by pure coincidences, such as presence at a crime scene. This fits in well with the results presented by other scholars, such as the human geographer Mats Widgren. Widgren has argued that large numbers of 'agricultural units' must have cooperated in order to organise their land-use, e.g. regarding fencing systems and circulation of pasture. His study covers the period from the Early Iron Age to the Middle Ages and suggests that the nature and degree of this type of cooperation changed over time. In the words of Widgren: 'a number of different links was continuously in the picture: to the family, to some kind of village community, to other communities, and possibly also to a landowner.[19] Widgren thus provided a picture of a society in which changing communal identities, to some degree created by coincidence rather than family bonds, were seen as a natural part of everyday life. A similar picture has been put forward by Sverre Bagge regarding 'political man' in Norwegian pre-state society. Bagge argued that political alliances during this time were seldom permanent. Pre-state political 'parties' consisted of two types of members, i.e. the core group which was strongly connected to the leader through permanent bonds such as kinship and marriage, and a larger group with looser ties to the leader. The chosen alliances of this group seem to have been determined by their own potential gains.[20]

Before we go any further, two important aspects must be discussed. Firstly, it must be noted that the judicial system was to a large extent based on customary law. The laws were called 'our laws' and were seen as matters that people knew of and agreed on. Matters brought to the thing, which the law did not cover, could only be settled by formal tests, such as oaths or ordeals.[21] The outcome of these cases then

[18] Gaunt 1983: 202-7; Helle 2001: 85-88; Johnsen 1948: 73-98; Stjernquist 1983: 233-4.
[19] Widgren 1986: 23-5.
[20] Bagge 1989: 238-39.
[21] Helle 2001: 72 and chapter 3; Robberstad 1971: 144. In the ordeal the accused was subjected to a painful task. If she/he managed to complete the task without injury, or if the injuries sustained healed quickly, the accused was considered innocent. This procedure was based on the idea that God would help the innocent by performing miracles on their behalf. Iuul 1960; Hamre 1960. For an explanation of the various types of oaths, see footnote 48.

formed part of the law. Secondly, it is important to point out that that disagreements should ideally be resolved through dooms, i.e. 'private' tribunals. The things were seen as the last solution, if all else failed. The use of the dooms meant that the matters that were brought to the things most often had already been settled in the eyes of the law. For these, no further discussions were needed, and the issuing of the verdict was seen as a pure formality.[22]

The concept of 'public knowledge'

The most important communal elements in the laws will now be considered. The concept of 'public knowledge', which has been seen as the foundation of early Scandinavian law, must first be discussed. This meant that 'facts and agreements', as well as the 'legal position between individuals' had to be well-known.[23] The implication of this was that all legal matters had to be made known to the public. In cases of conflicts, injuries and killings, the guilty parties must announce their acts. The offended party must also announce it as a charge against her/him.[24] The same principle applied to agreements of various kinds. Since very few, if any, written contracts were drawn up, agreements should be made in the presence of witnesses (the term used for this was *skírskota*). In case of later disagreements, the witnesses could be called in.[25] The significance of this concept can be demonstrated by the example of *vita fé*. If a person had witnesses on a loan (of e.g. chattels) to another person, the goods was called *vita fé*, i.e. goods that people knew of, and to which that person was thus entitled. To not respect such a right was punishable by law.[26] The role of the pub-

[22] According to many scholars, including Knut Helle and Knut Robberstad, the formal aspect of the judicial system was further enhanced by the fact that the legal proceedings should be carried out according to detailed regulations set out in the laws. If these were not strictly followed, there was no case. It was thus not the task of the members of the thing to 'solve' the cases brought to them. This means that, in practice, no knowledge of the circumstances relating to a case was needed in order to reach a decision, and verdicts were based on legal formalities, rather than actual events. The role of witnesses in the thing proceedings was in most cases to confirm that the formal legal requirements had been fulfilled, e.g. whether a murder had been reported within the specified time period or whether a contract had been entered into correctly. See Helle 2001: 72-73 and chapter 3; 73; Robberstad 1969; Brink 2003: 75-77. The importance attached to 'legal technicalities' is also made clear in Bagge 2001a.

[23] Larson 1929: 137-38; Helle 2001: 90-91; Stein-Wilkeshuis 1998: 313-14.

[24] Stein-Wilkeshuis 1998: 314; Helle 2001: 81 and 90; Meyer 1958.

[25] Larson 1929, 137; Helle 2001: 90-91; Stein-Wilkeshuis 1998: 313-14.

[26] G 49; Helle 2001: 91; Bøe 1960.

lic in matters of disagreements can be furthermore demonstrated by another example. According to the Law of the Gulathing, a woman who had been physically abused three times 'at the table or at an ale feast', i.e. in the presence of other people, had the right to divorce her husband and take the 'husband's gift' with her.[27]

There were two alternative ways of making deals in the presence of witnesses. One was to announce legal matters at popular gatherings. The thing was seen as the most suitable place, but churches, fully manned ships and ale houses were also mentioned as alternatives.[28] The other option was to call in a number of people for the specific purpose of witnessing what was said and done. This was recommended for e.g. business agreements and dissolution of marriages. In most cases, the laws do not state how many witnesses were required. They do however indicate that large numbers of witnesses were used. [29] Helle argued that this was the traditional way of treating such matters, and added that it is likely that they most often were dealt with at large gatherings. This was however a rather complex procedure, and with time, the number of required witnesses was reduced to two.[30] This is indicated by at least one chapter in the Law of the Gulathing, where it is stated that 'one witness is as good as none, but two is as good as ten'.[31] As was pointed out above, Stein-Wilkeshuis has demonstrated that regulations from pre-Christian times were at times included in the medieval provincial laws.[32] The complex procedure with a large number of witnesses may be one such case, and which later on in time was replaced by a regulation of Christian origin. That the simpler method represents a later stage of law is supported by the fact that similar statements appear in the Bible. In the Book of Deuteronomy, it is said that 'one witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses or at the mouth of three witnesses, shall the matter be established'.[33] It thus seems most likely that this concept was included in the laws after the official introduction of Christianity, and as such formed part of the move towards a more individual judicial system and society. This is further supported by the fact that also in the Law of King Magnus Lagabøter only two witnesses were required for these matters.[34]

[27] G 54; Riisøy 2004: 159.

[28] At these places it was possible to claim inheritance and carry out various kinds of transactions. See e.g. G 87, 107, 125, 127, 292; Helle 2001: 90.

[29] See e.g. G 36, 40, 78-79; Helle 2001: 90.

[30] Helle 2001: 90-91.

[31] G 59, cf. 35 and 266.

[32] Stein-Wilkeshuis 1998.

[33] Deut 19:15. See also 17:6.

[34] L I 4 1-2, cf. L VII 8.

The concept of public knowledge had some interesting consequences. It meant that all kinds of agreements and actions became known and thus also in a sense 'communal property'.[35] Furthermore, crimes committed in secret, such as theft, came to be seen as 'detestable'.[36] In fact, theft was one of the few crimes for which the Nordic laws allowed the guilty party to be killed on the spot.[37] Robbery, on the other hand, was seen as a less serious crime, as it was committed openly and the target had a chance of defending her/himself.[38] The effects of the distinction between 'secret' and 'public' crimes are also seen in other parts of the law, e.g. cases of murder and accidental death. A person who had killed a slave or an outlaw must announce this otherwise she/he would be held a murderer.[39] The same could happen to witnesses of an accidental death, who neglected to report the event to the heirs. Further examples that clearly demonstrate this principle are the regulations that required a person who was guilty of murder to report this deed to the first person she/he met.[40]

The lack of an executive body must have further added to the common knowledge of acts and agreements that today would be seen as rather private matters.[41] This can be illustrated by the procedure for the collection of fines, which is found in at least two chapters of the Law of the Gulathing. Here it is stated that neighbours were required to help the priest or the bishop's *ármaðr* (bailiff) to collect fines from guilty

[35] Cf. Larson 1929: 137.

[36] Stein-Wilkeshuis 1998: 318-19.

[37] The others were serious crimes, such as killings, injuries and sexual offences against close kinswomen. Stein-Wilkeshuis 1998: 315 and 318-19; G 143 and 160; F IV 30 stated that all men should have access to the thing apart from those who had killed at the thing and those who had been caught with stolen property.

[38] Revenge was therefore not allowed and the punishment was rather mild, i.e. a fine of three *merkr*. Stein-Wilkeshuis 1998: 321.

[39] G 182; F IV 1. The laws themselves consistently refer to 'he', 'man' and 'men', apart from those regulations that are specifically aimed at women. These expressions have however been seen as referring to people in general irrespective of sex and age. Helle 2001: 145; Hertzberg 1874.

[40] E.g. G 156, 158, 160, 161, 177, 182; F IV 1 and 7. According to G 156, the guilty party did not have to report her/his deed in the first house on his way, if near relatives of dead person lived there. The same applied to the second house. At the third house, she/he was however obliged to announce the deed, whoever lived there. Chapter 161 stated that a person who found a corpse was obliged to report this to the first person that she/he met, other wise she/he could be accused of murder. The concept of public knowledge is also present in G155, where it is stated that when two people were accused of the same murder, and only one of them appeared at the thing meeting, the absent party should be seen as one guilty of the crime.

[41] Cf. Larson 1929: 137 and Seip 1959. Bagge has pointed to the lack of a distinction between 'private' and 'public' spheres during the Middle Ages. Bagge 1989: 241-43.

parties. Those who refused to do so would be liable to pay a fine.[42] Similarly, according to chapter 81 of the Gulathing Law, which deals with pasture disagreements, the complainant should get the help of the freemen to drive the cattle off the land.[43] Some such elements were still present in the Law of the Frostathing and the Law of King Magnus Lagabøter. These laws stated that a person who had wounded someone else at the thing should be held in capture by the *ármaðr* and the *sýslumaðr*, with the help of the freemen if needed.[44] The Law of King Magnus Lagabøter moreover stated that in cases of murder, it was the duty of those present to try to capture the guilty party.[45]

The concept of public knowledge clearly emerges in some other aspects of the laws. For crimes committed in front of a 'crowd', no thing meeting was required in order to determine who the guilty party was. If someone killed another person under these circumstances, she/he should be executed on the spot.[46] It is not always clear how many people constituted a 'crowd'. However, according to some chapters of the Law of the Gulathing, 27 witnesses at a crime scene were seen as sufficient.[47] There were however cases when fewer people were needed in order to find the guilty party. This applied e.g. to cases when a person was killed in a 'gang fight', which involved at least five people.[48] The same concept is present in chapter 157 of the Law of the Gulathing.[49]

Communal guilt and punishment

Chapter 157 in the Law of the Gulathing, which deals with murders committed in ale houses, is moreover interesting as the communal elements here include guilt and punishment. If such murders were carried out during the day or in the light of fire, everyone present was obliged to find the guilty party, otherwise they should all pay full atonement both to the kinsmen and the king.[50] This means that they would all,

[42] G 9 and 19.
[43] G 81.
[44] F IV 10; L IV 9.
[45] L IV 17.
[46] G 183; Cf. F IV 10. This also applied to fully manned ships. G 171. In G 183 it is added that if the wounded man was still alive after a scab had formed on the wound, the guilty party would be obliged to pay a fine.
[47] This applied e.g. when a thing meeting was called at a murder scene. If such a case was to be heard 'properly' at a thingstead, ¼ of the thingmen must be present. G 151.
[48] G 154, cf. 168.
[49] G 157.
[50] G 157.

in a sense, be held guilty of the murder (even if they were neither fined nor outlawed). The prospective payment of atonement must have served as a rather good encouragement to find a guilty party. The concept of public knowledge is evident in the assumption that large numbers of people would have been present, awake, and with enough light to see. During the night, slightly different regulations applied.[51]

The Law of the Gulathing furthermore contains regulations regarding quarrels in ale houses. It was stated that all who were accused of 'provoking a quarrel' should defend themselves with a three-fold oath.[52] If this oath failed, they would each be liable to pay fine of fifteen *merkr*. In case ¼ of the men refused to swear the oath and left the house, everyone who remained should pay the penalty. If fewer than ¼ departed, they were to be considered the guilty ones and should thus pay the fine. Those still present should defend themselves by oaths.[53]

The Law of the Frostathing also comprises regulations dealing with killings in ale houses. By this time, however, some important changes had been introduced. This law stated that it was the duty of those who sat closest to the victim to state whether she/he had been killed or not. If they refused to do so, they should either owe a fine of three *merkr*, or swear a three-fold oath that they did not know who the killer was. Those who knew and refused to testify would never be 'competent to bear witness', nor should they 'enjoy testimony of any sort'. It was then the heir of the dead who should accuse the person she/he thought was guilty. This person should defend her/himself with a twelve-fold oath or through the ordeal.[54] This constitutes a clear development from the Law of the Gulathing, as it was no longer the responsibility of everyone who had been present at the time of the murder to find the guilty party,

[51] G 157. If a killing took place during the night, the one who reported it as his act should be held guilty. If one person was missing, that party should be held guilty. If all were still there, and no one announced the murder as their deed, the heir should accuse 'whomever' she/he wanted to.

[52] According to the Norwegian laws there were four different types of oaths: the two fold-oath (*tveggja mannar eiðr*), the three-fold oath (*lýrittareiðr*), the six-fold oath (*séttareiðr*) and the twelve-fold oath (*tylftareiðr*). These oaths required one, two, five or eleven compurgators respectively. The role of a compurgator (*váttr*) was to strengthen the oath given by the accused rather than to share any knowledge of the events connected to the crime. The seriousness of the crime determined which type of oath should be used. Both parties in a case usually participated in the selection of compurgators. If any of the compurgators refused to take the oath or failed to take it correctly, the entire oath was invalid. Hamre 1958; Virtanen 1958:489; Larson 1938: 424.

[53] G 187

[54] F IV 15. Similar regulations applied to killings at 'ale feasts'. F IV 14.

nor to pay the atonement. It is however important to note that the implications for those who refused to act as witnesses were harsh. To be unable to 'enjoy testimony of any sort', meant in practice that a person could not receive any defence in future legal cases.

The Law of the Gulathing contains several other regulations where everyone present at a crime scene could be held equally guilty. One such example is the regulation regarding two people who met at a cross roads and one killed the other. If the dying person was still able to speak when she/he was found, then the person whom she/he accused should be held guilty (unless this person could prove his/her innocence through the ordeal). However, if another person reported the killing as her/his deed, they should both be held guilty, even if the corpse had only one wound.[55] In this chapter, no evident wish to find out who had committed the crime is seen. Another regulation, in which the same sentiment is present, is the regulation regarding three people who travelled together and one person killed another. If the two survivors accused each other, they should both be held as banesmen.[56]

The Law of the Frostathing is slightly different, as this law displays at least a vague desire to find one guilty party. This law stated that if three people were together and one person was killed, and both survivors accused each other, both should by tried by ordeal.[57] The same aspiration is also seen in a regulation concerning similar circumstances in the Law of King Magnus Lagabøter.[58]

Two further examples of communal guilt in the Law of the Gulathing will now be considered. The first concerns accidents; if someone was killed on the beams underneath a ship, everyone who had been present should pay the dead person's wergeld. Moreover, if one boat happened to ram another boat that had its dragnets out, and someone was thus killed, everyone on the offending boat should pay the wergeld.[59] The second example concerns killings caused by 'gang fighting'. According to the Law of the Gulathing, those men who provoked the murder should pay a fine of 40 *merkr*. However, if neither side would admit having started the fight, both

[55] G 156.

[56] G 155. According to G 208, if two men had a fight and there were no witnesses, they should both pay atonement to the king.

[57] F IV 6. G 156 did however state that if no other person confessed to the murder, the one whom the dying person had accused should be tried by ordeal.

[58] This law stated that in cases when a wounded person could with certainty point out the guilty party, this person should defend her/himself with a twelve-fold oath. L IV 11.

[59] G 173 and 174.

sides should pay the wergeld and a fine of 40 *merkr* to the king.[60] According to the Law of the Frostathing, if no one assumed the guilt on such occasions, all who had been involved should be outlawed. The heir had moreover the right to accuse the 'best person' as the killer.[61] In the latter example, a clear development towards more individual law can thus be seen.

Moreover, according to the laws of the Gula and the Frostathing, also the execution of punishments could be communal. This concerned thieves who had stolen goods worth less than one *ørtog*. In these cases, the guilty party should 'run the gauntlet', i.e. the people should form a 'street' through which the thief should run, while they were hurling stones and turf at her/him.[62] The laws do not state whether these thieves should be killed or not. It can however be assumed that this decision was left to the participants.[63] The serious consequences of petty theft clearly demonstrate the fundamentality of the concept of public knowledge to the population in early medieval Norway. It is furthermore interesting to note that by the time of the Law of King Magnus Lagabøter the punishment of running the gauntlet was no longer allowed. By this time, the population could no longer participate in the execution of punishments. Moreover, in this law, the punishments for theft were reduced, so that a person could steal for the sum of one *eyrir* three times without losing her/his life.[64] In this way, the laws became more compassionate, which may be seen as part of a general move towards more a 'humane' legislation.[65] It could however also be suggested that an equally strong reason for this development was the gradually decreasing importance of the concept of public knowledge, evidenced in the Law of King Magnus Lagabøter. This law recommended that for important deals, written documents should be drawn up, so that in case the lawman had to give a verdict on the matter, there was 'evidence of their purchase, even if the witnesses were not present'.[66] It can thus be

[60] G 167.

[61] F IV 23.

[62] G 253; F XIV 12; Helle 2001, 102; Bøe 1964. According to chapter 168 of *Bjarkøyretten*, a person who was about to run the gauntlet should have her/his head shaved and then covered with tar and feathers. A person who did not throw anything at the thief during the 'run' should pay a fine. Bøe 1964.

[63] As was stated above, theft was punishable by death.

[64] L IX 1; Bøe 1964: 452. Another communal aspect concerned 'finds'. If two people were travelling together, and the one who walked in front of the other found something of value, they should both have an equal share of it. The same applied to people travelling by boat. G 144; Carlsson 1964.

[65] Bøe 1966: 235.

[66] This has been seen as influence from Roman law. L VIII 11; Robberstad 1969: 134.

argued that, in the long-term, the more widespread use of written documents as evidence, as opposed to 'public knowledge', led to more privacy regarding legal matters.

Women and slaves formed part of the freemen's collective

Finally, it must be mentioned that slaves in particular, and to some extent also women, formed part of the freemen's collective. The situation of women will first be discussed. According to the laws, women who were minors or married had the least power to act on their own in legal matters. Their guardians or husbands should receive atonement on their behalf, and presumably also represented them at the thing. Women themselves were allowed to act as plaintiffs or defendants in certain cases, although in settlements concerning *odal* land, they had to be represented by a man.[67] Helle has argued that women were only in exceptional circumstances accepted as witnesses.[68] It is however possible that women were in practice rather more active than what is implied by the laws. Nils Ahnlund has shown that in 15th-century Jämtland and Härjedalen (Sweden), from which districts a lot of written documentation has been preserved, women were rather active in legal matters. In these areas, women often carried out economic transactions on their own and they also acted as witnesses for legal transactions concerning land. Purchases were moreover made by husband and wife together and when land was sold, the wife's consent was often required. Ahnlund suggested that these women may have been more independent than those in other geographical areas, which could be due to 'the population's lively commercial frame of mind'. [69] The possibility must however be considered that women in earlier time periods and other areas were as active, and that it maybe the lack of source material which prevents us from seeing this.

In terms of punishment, women were however seen as individuals, even in the eyes of the law. A woman, who committed murder, should be outlawed, just as a

[67] G 47, 197 and 290-91; F X 36, XI 7; Helle 2001: 141-45; Robberstad 1969: 132. One exception regarding atonements concerned fights between women. In these cases, the atonement could only be claimed by the women. G 190.

[68] Helle based this argument on the Law of the Gulathing where it is stated that women were allowed to act as witnesses in cases of murder of close relatives, such as their husband, brother, son or father. Helle 2001: 145.

[69] Ahnlund 1948: 497.

man. Moreover, if a woman injured someone else, she should pay the compensation and a fine to the king.[70]

In the earliest phase of law, slaves clearly constituted another communal element in the society of the freemen. The slaves' position within the judicial system was more restricted than that of the women, as the slaves were seen as the property of their masters.[71] The masters received fines on behalf of their slaves, but also had some legal responsibility over them. This means that if a slave was killed, the master would receive the atonement. On the other hand, if a slave worked on a feast day, it was the master who should pay the fine. However, if the slaves committed a serious crime, they would receive the punishment, which often was flogging.[72] In these cases the slaves, in the same way as free women, were seen as individuals, responsible for their own actions, presumably as this was the easiest option for the freemen.[73] It is worth pointing out that in cases of murder, the master could take an oath on behalf of his slave. This was however rather risky since the master would be outlawed if the oath failed,[74] may thus not have been commonly occurring.

Private dooms

The communal character of the private dooms will now be considered. The laws stated that cases regarding private ownership (such as *odal* land), which could neither be backed up by witnesses nor public knowledge, could be taken before a doom (*dómr*). As mentioned above, this was a private tribunal, which should bring the parties to a 'friendly agreement', without involving the thing assembly.[75] If someone had

[70] G 159 and 190; F IV 33 and 35. One difference was that outlawed women should be escorted out of the country by relatives, while men were given five days during which they had to leave the country. Helle 2001: 144.

[71] For a detailed discussion of this topic, see Iversen 1994: 67-77. See also Helle 2001: 125-28.

[72] G 16-18, 22, 163 and 259; F II 2, X 40 and X 44; Helle 2001: 126.

[73] It is also worth noting that in cases of 'housebreaking' slaves were allowed act as witnesses. F IV 5. Tore Iversen has argued that slaves were distinguished from cattle in the way that slaves were seen to be capable of acting on their own. A slave was thus regarded as a person 'in the negative sense', i.e. some one who could be punished for her/his actions, as opposed to a person 'in the positive sense' who additionally also had rights in the eyes of the law. Iversen 1994:88-9.

[74] G 163, cf. Iversen 1994: 87.

[75] Halvorsen 1958: 215; Helle 2001: 91; Larson 1929: 138-39; Robberstad 1969: 133-34. For a detailed description of the dooms, see Larson 1929.

an economic demand on another person, she/he should summon that person to be at home on a particular day and then on that day, in the presence of witnesses, order her/him to pay the debt. The defendant could then either pay up, agree to a doom, or refuse to pay. In the last case, she/he would be called to the thing. If she/he opted for a doom, each of the two parties should choose up to six people each, who were to be members of the doom. In order to avoid bias and undue pressure, neither close relatives (by blood or marriage) nor the king's officials (the *ármaðr* or the *lendr maðr*) could be included.[76] It is important to point out that the aim of the doom was not to evaluate the actual circumstances of the case, but rather to test whether the plaintiff had legal witnesses for her/his demands. If that was the case, the defendant could only avoid paying the demanded sum by denying the claim through an oath.[77]

In cases regarding *odal* land, up to three dooms could be held. At the first one, the plaintiff should bring three witnesses for the *odal* and also witnesses to verify the testimony of the *odal* witnesses. The defendant could only win the case by naming at least one more of both types of witnesses than the plaintiff. The counter witnesses should be brought to a second doom. If the defendant did not manage to bring more witnesses than the plaintiff to this doom, she/he had lost the case. If she/he succeeded, the plaintiff should give her/him the right to the land.[78] If the numbers of witnesses were equal, the case should be taken to a third doom, which consisted of twelve people (six from each side). All the members of this doom should place a bet of two *aurar* each, to prove that their side was right. If someone refused to do this, that side lost the case. However, if they all agreed to place the bet, the matter should be taken to the thing.[79] Helle has pointed out that in reality, presumably only the first doom took place. This is supported by some other chapters of the Law of the Gulathing, where it is stated that both new witnesses and counter witnesses could be brought to the first doom.[80] Despite this, it was a very laborious process, which involved the cooperation and agreement of large numbers of people.

Over time, there was a gradual move towards a simpler judicial system, where matters were decided by fewer people. The role of the doom was drastically reduced

[76] The role of the king's officials will be discussed in more detail below.

[77] See e.g. G 37 and 47; F X 36; Halvorsen 1958; Helle 2001: 91. The procedures for oath-taking will be discussed below.

[78] G 60 and 266; Helle 2001: 91-92.

[79] G 266; Helle 2001: 91-92.

[80] G 86 and 121; Helle 2001: 93; Cf. F XII 6-8 and X 12-15. It is moreover interesting to note that Imsen argued that the doom presumably originated from the legal system of the 'pre-state society'. Imsen 1990: 29.

in the Law of the Frostathing, and by the time of the Law of King Magnus Lagabøter the private doom had been more or less removed from the law. The dooms did however continue to be used within the public sphere of the judicial system, but in a much less complex form. The Law of King Magnus Lagabøter stated that important cases at the thing should be tried by a doom consisting of twelve people. For less serious offences, the dooms were reduced to six people.[81]

The communal aspects of the legal proceedings

The communal nature of the legal proceedings at the things will now be considered. The thing organisation consisted of things at different levels of society; local, regional and supra-regional. The local and regional things were althings, which meant that all the 'thingmen' were required to attend, i.e. the freemen who had at least one worker aged over fifteen. Widows, lone workers and those 'not able bodied' could attend the meetings if they wished.[82] According to the laws, the four law things (*lögþing*), i.e. the Gulathing, the Frostathing, the Eidsivathing and the Borgarthing were the highest instances.[83] Jens Arup Seip has however shown, on the basis of documents dating from the 14th century onwards, that the Eidsivathing and the Borgarthing very rarely functioned as law things for the whole of their legal districts. On a more regular basis, these two things seem to have served as local and regional legal assemblies.[84] The laws moreover state that for each of the law things, there was a set number of chosen representatives whose presence at the meetings was obligatory. The regulations regarding who could become a representative were the same as those for the thingmen in the Law of the Gulathing.[85]

At the local and regional things, the verdicts were settled by the thingmen. Since no executive power existed, it may have been difficult to get the population to respect these verdicts. It must thus have been important to get the agreement of as many men as possible. If the men at the lowest thing instance (*fjórðungsþing*) could not reach a

[81] L IV 4-5; Halvorsen 1958: 215-16; Helle 2001: 93; Andersen 1977: 258.

[82] G 131; F I. According to G 131 lone-workers were required to attend the king's things, muster things and things that dealt with murders. A man who had someone working for him who was under the age of fifteen was considered a lone-worker. For an overview and discussion of the different levels of things, see Helle 2001: 76-81.

[83] G 35 and 266; Helle 2001: 76; Hagland and Sandnes 1994: xv-xvii; Knudsen 1959a: 654 and 1960a: 556; Bøe 1965a: 178.

[84] Seip 1934: 25-27.

[85] They should be *bønder* who had at least one person over the age of fifteen working for them. L I 1; cf. G 131.

unanimous verdict, the case could be taken to the next level, which was the thing of the *fylki*. At these meetings, a verdict was valid, as long as ¾ of the thingmen could reach an agreement. Otherwise, the case could be brought to the law thing.[86] Thus, at these levels, the verdicts were communal decisions taken by large numbers of people.

The way in which matters were settled at the law things, and by whom, is not entirely clear. According to the Olav-text in the Law of the Gulathing, there should be c. 400 representatives at the Gulathing.[87] In the text attributed to Magnus, the number of representatives had been reduced to 246.[88] The Law of the Frostathing stated that 400 representatives were required to attend the meetings of the Frostathing.[89] The Law of King Magnus Lagabøter introduced some changes into this area of the judicial system. For the Gulathing, the number of representatives was further reduced to 148. The drastic character of this reform is made clear when one considers that, at the same time, four *fylki* were added to the judicial district of the Gulathing. For the Frostathing, on the other hand, the number of representatives was kept the same as before, i.e. 400.[90]

The duties and functions of the representatives are not always clearly described in the sources. According to the Law of King Magnus Lagabøter, only 36 (3x12) of the representatives should serve as law court men (*lögréttumenn*).[91] These men should sit inside an enclosure (*vébönd*) at the thing site and it was their duty was to make a decision regarding the cases brought to the things.[92] The rest of the people who were present should be gathered outside the *vébönd* and approve the law court men's decisions, i.e. provide a verdict, by rattling or brandishing their weapons (*vápnatak*).[93]

[86] G 35, 266; Helle 2001: 97; Taranger 1924: 20.

[87] The number of representatives varied between the *fylki* and was probably in some way connected to the number of inhabitants. The following numbers of representatives were required from the different *fylki*: Hordafylki 102, Rogafylki 102, Firdafylki 80, Sognfylki 64, Egdafylki 27 and from South Møre (Sunnmøre) as many who wished to attend. This makes a total of 375 plus the men from South Møre. G 3; Helle 2001: 65-66; Taranger 1924: 17-18.

[88] Fewer representatives were now required from each district. G 3; Helle 2001: 65-66; Taranger 1924: 17-18.

[89] It was stated that 40 representatives from each of the four *fylki* of Inner Trondheim and sixty from the four *fylki* of Outer Trondheim should be present, i.e. in total 400 men. F I 2; Taranger 1924: 28-29.

[90] L I 2; Taranger 1924: 38-40.

[91] L I 3; Robberstad 1971: 142; Andersen 1974: 353.

[92] L I 5. The *vébönd* is described in *Egil's Saga*, Jones 1960: chapter 56, 139; cf. Brink 2002: 90; Helle 2001: 71-72.

[93] G 267, 279 and 292; F XII 2, XII 4 and XIV 4; L I 5; Helle 2001: 72-74.

The laws of the Gula and the Frostathing do not make it clear whether all the representatives should serve as law court men, or whether they should participate outside the *vébönd*. This uncertainty has caused debate among scholars. Some have argued that it would have been impossible for 400 men to agree on legal matters. These scholars have thus suggested that the 400 representatives mentioned in the Law of the Frostathing must have represented the total number of representatives that were required to attend the thing meetings.[94] It was thus argued that the law court at the Frostathing consisted of 36 men, as was the case in the Law of King Magnus Lagabøter. Support for this argument was found in the regulations in the Law of the Gulathing that required all these men to take an oath at the opening of the law thing. It was suggested that this meant that all the representatives, when needed, were entitled to take part in the proceedings of the law court, something which the thingmen were not.[95]

Other scholars have argued that it is not unreasonable to believe that all of the 400 representatives were law court men. One such scholar is Helle, who supported his view by a number of arguments. Firstly, he drew attention to the fact that the Law of the Frostathing clearly stated that all 400 representatives should sit inside the *vébönd*. Secondly, that also at the Gulathing, all of the 400 representatives seem to have served as law court men. This is indicated by the fact that the Law of the Gulathing on one occasion named the law court (*lögrétta*) as the highest instance and on another occasion the Gulathing. Helle moreover argued that the oath that the Gulathinglaw required the law court men to take probably had the same effect as the 'judgement oath' that the Law of King Magnus Lagabøter required from the law court men. Finally, Helle compared the *vébönd* to the 'court circle' hinted at by some Swedish provincial laws. According to these laws, all the freemen present at the thing meetings should sit inside some kind of circle (*a þing oc a ring*).[96]

[94] The regulation in the Law of the Frostathing that stated that the 400 representatives should sit inside the *vébönd* has been explained as copying error made by a scribe. F I 2; Helle 2001: 71-72; Hagland and Sandnes 1994: xxvii- xxviii; Robberstad 1971: 142; Knudsen 1959a: 655.

[95] Absalon Taranger was of the same view as Knut Helle, both regarding the Gulathing and the Frostathing. He stated that 'there is no indication of the twelve-man system' in the Law of the Gulathing, and that there was 'no doubt' that the law thing at the Frostathing consisted 400 men. Taranger 1924: 21 and 29-31. Helle 2001: 71-72; Hertzberg 1874: 120-24; Hagland and Sandnes 1994: xxvii-iii; Robberstad 1971: 142.

[96] G 3, 35 and 266; L I 2-3; Helle 2001: 72; Holmbäck and Wessén 1979: Dalalagen, Tjuvnadsbalken V and Västmannalagen Mannhelgdsbalken XXVI §5; Modéer 1974: 334-35. G 240 moreover contains a reference to a 'thing ring' (*þíngríng*).

Taking all the above evidence into consideration, it therefore seems most likely that all the representatives in the laws of the Gula and the Frostathing were law court men, and thus took part in the decision making process. In order to be able to accept Helle's argument, it is important to once again stress the formality of verdicts in the early Middle Ages. The presence of many people at the law things may thus not necessarily have constituted a hindrance to the proceedings. It must be pointed out that, even if one disagrees with this conclusion, and takes the view that the law courts of the Gulathing and the Frostathing consisted of 36 men only, it still means that the thing proceedings were communal efforts. Furthermore, it must not be forgotten that the decisions taken by the men inside the *vébönd* should be approved by *vápnatak* by the rest of the thingmen. This communal procedure applied to the things at all levels. Whether this was a pure a formality, or not, will be discussed below.

The influence of the king and his officials on the thing proceedings

The question is whether the legal decisions and verdicts were communal also in practice. This is of course a difficult question to answer, since there are no protocols from the court proceedings. During the early Middle Ages three different types of royal officials existed: the *ármaðr*, the *lendr maðr* and the *sýslumaðr.* These were the king's representatives regarding legal, economic and military matters.[97] Their duties and influence in connection to the decision making process of the things will now be considered. It was their duty to call the thing meetings, attend the thing meetings as the king's representatives,[98] and name the representatives for the law things.[99] These men should moreover construct the *vébönd*, as well as oversee executions and corporal punishments.[100] The main difference between them was their social status. The *ármaðr* was purely a royal servant, and thus of rather low status. During the twelfth and thirteenth centuries, the royal *ármaðr* gradually disappeared, and his duties were transferred to the *sýslumaðr,* who seems to have been of rather high social

[97] The duties of these officials have been examined by many scholars. Helle 2001: 149-56; Andersen 1972 and 1976b; Bøe 1965b.

[98] According to the Olav-text in the Law of the Gulathing, the *lendr maðr* and the *ármaðr* had thing duty. In the Magnus-text, it is stated that some of the *lendr maðr* should stay at home to look after the property of those who were away. G 3; Helle 2001: 71 and 155.

[99] According to the Magnus-text in the Law of the Gulathing and the Law of King Magnus Lagabøter, it was the *lendr maðr, ármaðr*, or *sýslumaðr* who should name the representatives. G 3; L I 1; Helle 2001: 67.

[100] Andersen 1972: 651-52 and 1976b.

standing. Documents from the second half of the thirteenth century moreover suggest that the *sýslumaðr* was the king's local representative in the administrative districts called the *sýsla*. He was in this way the prime mover within a stronger and more efficient local rule.[101] The *lendr maðr* and the *ármaðr* were contemporaries. The *lendr maðr* was a local magnate with his own powerbase, who had presumably received land from the king in exchange for his service. Since these two officials had more or less the same duties, it seems that the *lendr maðr* should act as a standin, if no *ármaðr* was available.[102] The abolishment of the *ármaðr* and the transfer of power to the *sýslumaðr* clearly show the strengthening of royal power, and as a consequence, the reduction of the influence of the *bøndr*[103] on the judicial proceedings.

The laws thus clearly show that these officials had important roles in the judicial system. There is nothing to suggest, however, that these men should take part in the actual thing proceedings, rather the opposite. The Law of the Frostathing clearly stated that the *lendr maðr*, must not 'appear in the law court', unless he had received permission from the *bøndr*. In another chapter it is stated that a *lendr maðr* should not 'be present at a five-day moot…unless he has a suit to prosecute or to defend'.[104] The *ármaðr* does not seem to have played any role in the actual thing proceedings, apart from constructing the *vébönd*.

Further evidence that the royal officials should not be involved in legal proceedings is the prohibitions for them to take part in the private doom. Indeed, anyone who appointed a *lendr maðr* or an *ármaðr* to a doom would lose by default.[105] These officials were not even allowed to be near the proceedings. This is particularly clearly seen in the Law of the Frostathing, where it is stated that the *lendr maðr* should not "come to a doom or to a farm where a doom is sitting, except he be travelling on the highway; but if he does come, let them both go forth, plaintiff and defendant, and order him to leave".[106]

[101] The bishop's bailiff existed until the end of the 13th century. Helle 2001: 150-52; Andersen 1972 and 1976b: 450.

[102] G 3 and 152; Helle 2001: 149-52; Bøe 1965b; Andersen 1976: 448-49.

[103] A *bóndi* is here defined as a freeman who was the head of his household and could thus represent all the members of this house at thing meetings at various levels. Bjørkvik 1957.

[104] F 1 2 and X 16; Helle 2001: 154-55. The Frostathinglaw added that 'no man who is not appointed to the law court shall have a seat within the enclosure'. F I 2.

[105] G 37; Helle 2001: 154-55. According to G 37, the *lendr maðr* and the *ármaðr* should 'not be allowed to approach so near the doom that their voices can be heard'.

[106] F X 16.

The power and duties of the royal officials must now be set in relation to those of the representatives and the thingmen. The laws do on several occasions refer to the representatives and the thingmen as *bøndr*.[107] As mentioned above, the Law of King Magnus Lagabøter stated that the representatives should be freemen who had people working for them. It does not seem unreasonable to suggest that those who were chosen as representatives are likely to have been rather powerful men within the *bóndi* community.[108] They are however unlikely to have been magnates, as they do not seem to have been economically strong. According to the Olav-text in the Law of the Gulathing, the representatives should be provided with food and money for their travels to and from the law things. These measures were increased in King Magnus's revision when the number of representatives was cut. The increase in provisions suggests that it had been difficult to make sure that all the representatives attended the thing meetings.[109] Economic difficulties may partly have been of the reason for this.

Moreover, the laws of the Gula and the Frostathing clearly distinguish between the *lendr maðr* and the *ármaðr* on the one hand, and the *bøndr* on the other. The officials' legal position was for example above that of the *bøndr*. Helle has moreover argued that the royal officials could not have been part of the *bøndr*, since it was from this group that they should choose the representatives.[110]

Another interesting aspect is that the *bøndr* could take the royal officials to the thing in case they exceeded their duties. If an *ármaðr* was found guilty, his fine should be paid to the *bøndr*. The Laws of Gula and the Frostathing moreover prescribed a rather light punishment for those who had wounded or killed an *ármaðr*.[111] The intention may have been to create a balance between the king and the *bóndi* community. The *bøndr* should be able to afford to stop an *ármaðr* who had acted beyond his powers. Also a *lendr maðr* could be taken to the thing. His fines should however be

[107] Helle 2001: 68. In G 3 it is stated that the *bøndr* had the duty to meet up at the althings. In chapter 131 of the same law, the representatives from Sunnmøre are referred to as *bøndr*. Moreover, according to F I 2 the *lendr maðr* would only have access to the law court if the *bøndr* allowed it.

[108] L I 1; Helle 2001: 68-69. Since lone-workers were not required to attend the meetings of the althings, it is unlikely that they could be a chosen as representatives for the law things. Helle 2001: 68.

[109] G 3; Helle 2001: 68-69.

[110] G 141, 152, 200, 253, 267 and 314; F 1 2; Helle 2001: 68.

[111] The punishment for wounding or killing an *ármaðr* was a fine of fifteen *merkr*. G 71, 141 and 170; F IV 57 and X 33. Helle 2001: 150-51; Bøe 1965b: 502.

split between the king and the *bøndr*, which demonstrates his position between the two.[112] Moreover, if a *lendr maðr* killed someone in their own house, he himself should be killed. If he fled the kingdom, he would be permanently outlawed.[113]

This should be compared to the regulation in the Law of King Magnus Lagabøter which stated that a person who killed a lawman on account of his 'correct' declaration of the law was to be permanently outlawed.[114] This regulation clearly shows the increasing royal power. By this time, it must have been extremely difficult for the *bøndr* to have any influence on the judicial proceedings.

The communal idea can also be clearly seen (in theory) in the regulations regarding the introduction of new law. Chapter 2 of the Law of the Gulathing which dealt with royal succession was centrally issued by King Magnus Erlingsson, the church, and approved by a national assembly, presumably the meeting of 1163/64. The heading of this chapter in the *Codex Rantzovianus* reads:

These are new ordinances which were published by K[ing] M[agnus] on the advice of Archbishop Eystein, Erling Jarl, and all the most prudent men in Norway [my underlining].[115]

In the Law of King Magnus Lagabøter, from the 1270s, the wording of the heading to chapter IV 13 reads more or less the same, word for word.[116] It is significant that the laws were 'published' by the king after the 'advice' of his men. The actual acceptance of the law did not occur until it was 'taken' (*tekin*), which presumably happened at the Gulathing. This must however have been theory rather than practice. It is clear that kings could of old introduce new law. Thus, when Magnus Erlingsson formulated his laws, the representatives had little choice but to accept them. It is however interesting to note that the *Codex Rantzovianus*, from the 1250s, still placed the formal acceptance of law with the law thing.[117] A clear change can be seen in an edition of the ecclesiastical regulations from the early fourteenth century. In this edition, the heading to the regulation regarding royal succession stated that it was the

[112] G 71, 141, 152 and 253; Bøe 1965b: 502; Helle 2001: 150-51.

[113] F IV 52. It is interesting to note that the same regulations applied to kings and 'jarls'. F IV 50-51. Moreover, according to F IV 53, a freeman who wounded someone should pay a fine of two *baugar*, while a *lendr maðr* should pay twelve *baugar*. An offending jarl should pay 24 *baugar* and a king 48 *baugar*. A *baug* was here constituted by twelve øre.

[114] L IV 3.

[115] G 2.

[116] L IV 13. 'These…were given by King Magnus… with the advice and agreement of the most prudent men in the country, and after the plea of the public'.

[117] Helle 2001: 147-48.

king, archbishop, jarl and national assembly who accepted this chapter. By this time, the king seems to have emerged from being the lawgiver in reality, to also having been accepted as the formal lawgiver.[118]

Considering all the evidence, it seems clear that the *bøndr* had a rather strong position in the earliest laws. Naturally, it must have been difficult for the *bøndr* to take the lead in practice also in the time of the Older Law of the Gulathing. But, as Helle has pointed out, it is significant that the *bøndr* according to the laws did not want to give the real judicial power to the king.[119] In connection to this, the formality of the thing proceedings must once again be stressed. It therefore seems most plausible that the representatives at the Gulathing and Frostathing originally were the ones who settled legal matters.[120]

The growing power of the lawman

The system of involving large numbers of men in the legal proceedings seems to have changed with the increasing powers of the lawman (*lögmaðr*). In the earliest Middle Ages, the lawman should recite the law to the public and also give *órskurðr*, i.e. explain the stance of the law regarding matters brought to the thing. At this time, the lawman appears to have represented the *bøndr*, rather than any higher authority.[121] However, from the time of King Sverrir, the lawman became a royal official. His *órskurðr* increased in importance and gradually gained the character of a verdict. By the 1260s, the lawman had become an approved judge.[122] This can be demonstrated by the following quote from the Law of the Frostathing:

> we have frequently heard [it said] that some men, though justly accused, refuse to appear before the lawmen, even when summoned as the law directs; and many refuse to accept the lawman's opinion after he has declared the law.

[118] Helle 2001: 147-48.

[119] Helle 2001: 155. Sverre Bagge has shown that powerful people received preferential treatment in legal matters in the early Middle Ages. Bagge 2001a.

[120] Cf. Helle 2001: 72.

[121] Tobiassen 1965: 154-55; Helle 2001: 74-75; Robberstad 1971: 143.

[122] Tobiassen 1965: 154-56; Helle 2001: 74; Robberstad 1971: 142-43. However, also in the Law of the Frostathing, it is stated that the 'men who are appointed to the law court shall declare the law...And in all cases that are not clearly determined by the law book, that is to be followed which the men of the law court are unanimously agreed upon and which seems most equitable before God'. F I 2.

> But it was our intention to employ lawmen and to endow them with grants out of our revenue and inheritance [to the end] that every man should be able to bring his suits to a conclusion according to the legislation of the holy King Olaf and the opinion of these lawmen.[123]

This regulation clearly demonstrates that the power of decision making in the judicial system had been passed into the hands of individuals. This was naturally part of the king taking over this system, but was presumably also connected to the Christian idea of judges as individuals. The power of the lawman is also clearly seen in the Law of King Magnus Lagabøter where it is stated that when the law court men could not agree, the lawman should decide together with those law court men who agreed with him. It is moreover likely that it was the lawman who appointed the law court men.[124]

The *sáttmál* and the *órskurðr*

Another development towards individual decision making is the appearance of the *sáttmál*. This meant that matters for which the position of the law was well-known, could be settled by kings' or bishops' officials, without the need for a thing meeting. These officials had thus in practice gained the function of judges. In the Law of the Gulathing, the *sáttmál* is only found on one occasion. As this chapter cannot be dated, the only thing that can be said with certainty is that the *sáttmál* was known at least from the end of the period when the Law of the Gulathing was valid. Since it appears only once, it does not yet seem to have become common procedure. It has been suggested that the king supported this practice from the end of the thirteenth century.[125]

A further, and most significant, move towards placing the power over the legal decision making in the hands of individuals is found in the Law of King Magnus Lagabøter. The king had now acquired the right to overturn all verdicts. According to the law, the king could break the lawman's *órskurðr* if he had another opinion of

[123] Anyone who did not follow these regulations would be liable to pay a fine of three *merkr*. F Introduction 16.

[124] L I 4; Helle 2001: 74-75; Tobiassen 1965: 154-56; Bøe 1965a: 180.

[125] G 33; Helle 2001: 157-58. This should be compared to Iceland in 1262-4 when the Icelanders accepted the rule of the Norwegian king Hákon gamli Hákonarson and his son Magnús. This took place at a meeting of the althing where the rights and duties of both parties were set out. At this time, the Icelanders agreed to pay tax to the Norwegian king as long as he fulfilled a number of specific conditions, such as allowing the population live in peace and use their own laws. If the king did not fulfil these conditions, the Icelanders would be freed from the agreement. This settlement later came to be called *Gizurarsáttmáli* and has been considered as one of the most important documents of Icelandic history. Guðni Jónsson 1960.

the position of the law, or if he 'with the agreement of wise men should see that something else is truer'. This right was justified by the simple statement: 'because he [the king] is above the law'.[126]

The increased significance of outlawry as a punishment

The concept of outlawry must also be discussed. According to the Germanic school of thought, outlawry was the traditional punishment in Old Norse society. More recent research has however painted a rather different picture. It is now argued that outlawry may go far back in time, but if this is the case, it was used as punishment for only a small number of very serious crimes. Outlawry is instead seen as a punishment that medieval kings and clerics used increasingly over time. This has been demonstrated for Swedish and Danish laws and can be seen also in the Norwegian material. It is clearly shown by chapter 32 of the Law of the Gulathing, which was issued after the 1163/64 revision, where the number of crimes for which the punishment would be permanent outlawry was greatly increased.[127] The use of outlawry as punishment was further increased during the thirteenth century, e.g. in the Law of King Magnus Lagabøter.[128] The extended use of this punishment is an additional part of the development towards a society more focused on the individual, since outlaws were, temporarily or permanently, excluded from society. Anyone could thus kill her/him without being punished. It was moreover prohibited to travel with outlaws or indeed to help them in any way.[129] This can be seen as a clear breech with the traditional family-based society, in which the blood feud had played a large part. This involved the taking of revenge on behalf of relatives, e.g. if someone was killed, a member of the offender's family also had to be killed. The move towards a more individual society is furthermore demonstrated by the increasing prohibitions against the blood feud over time. By the time of the Law of King Magnus Lagabøter, this practice had been almost fully outlawed.[130]

[126] L I 11, Cf. I 4; Helle 2001: 155-56; Tobiassen 1965: 158; Taranger 1904: 198-99.
[127] G 32; Helle 2001: 99-101.
[128] Bøe 1959: 602; see e.g. L IV 4.
[129] G 140, 202-3 and 207; F IV 41; L IV 8.
[130] Wallén 1962: 239-40; Johnsen 1948: 73-92.

The taking of oaths

Finally, the oath taking procedure will be taken into consideration. Also here, some strong communal elements were present. As mentioned above, oaths were used for matters which had not previously been settled. In most cases, the oath taker needed a number of compurgators to confirm her/his oath.[131] The compurgators can be seen as character witnesses, since their oaths were based on their knowledge of the defendant, rather than actual circumstances. These must however have played a part in practice.[132] The oath taking constituted a very strict ritual. All the compurgators had to take 'the same oath', in the 'same terms', and they also had to be unanimous. Moreover, if half of the compurgators failed to take the oath 'correctly', the entire oath was seen as invalid.[133]

The number of compurgators required depended on the seriousness of the matter. In less serious cases, the accused could defend her/himself purely through his/her own oath. However, in most cases two, five, or eleven compurgators were needed, i.e. three, six, or twelve people, together with the accused. The twelve-fold oath was used for cases of murder and treason, while the six-fold oath was recommended for e.g. theft of at least one *ørtog*. The three-fold oath seems to have been the one most commonly used.[134] Thus, a person who needed to defend her/himself was in most cases dependent on having a number of people who could support the statement. The oath of an individual was not seen to suffice.

For certain crimes, such as some types of murder, sorcery, and homosexual sex, oath-taking was not accepted. In these cases, the defendant should show her/his innocence by ordeal, such as carrying hot iron.[135] This also applied to people who could not find any witnesses or any compurgators.[136] In the ordeal, the outcome was seen to be decided by God himself. This was thus one of the few occasions when a person's fate was not decided by a group of people.[137] Moreover, a person who did not have a network of people who could act as compurgators, was on her/his own in the judicial system.

[131] Helle 2001: 102-4; Hamre 1958.
[132] Helle 2001: 103.
[133] Larson 1929: 151-52.
[134] G 132-35 and 253; F IV 8; Helle 2001: 102-4; Larson 1929: 147-50; Hamre 1958.
[135] See e.g. G 32, 158, 314; F II 1, II 45, III 15; Helle 2001: 104-5; Hamre 1960; Larson 1929: 152-53.
[136] Larson 1929: 152.
[137] Helle 2001: 104; Robberstad 1969: 133; Hamre 1960.

Final conclusions

This article has demonstrated that strong communal elements were present in the earliest laws, particularly in the Law of the Gulathing. Until the late thirteenth century, legal decisions and verdicts were settled through the cooperation of large numbers of people. A striking feature in the Law of the Gulathing is the absence of a desire to find one guilty party. In the Law of the Frostathing, and particularly in the Law of King Magnus Lagabøter, the aim is to find one guilty party. This development was most likely the result of Christian influence, as individuals were now seen to be responsible for their own actions. Indeed, in the Law of King Magnus Lagabøter, the degree of punishment was at times decided according to intention behind the crime and the disposition of the guilty party.[138]

The changes that took place over time can be further demonstrated by the noticeable differences between the regulations discussed in this article and the ecclesiastical regulations (*kristinn réttr*) in the laws of the Gula and the Frostathing. The latter ones do not contain any cases of communal guilt or punishment, indeed punishments were at times constituted by personal penance.[139] It is clear that many of the regulations in the other sections of the laws were derived from old customary law, and were only gradually changed to fit a Christian society.

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[138] Sigurðsson 1999: 138-39 and 178; Bagge 2001b: 366-70. It has been argued that the Law of King Magnus Lagabøter is leavened by the concept of individual guilt. It is however important to point out that this is present also in the ecclesiastical regulations of the laws of the Gula and the Frostathing.

[139] See e.g. G 7.

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Sammandrag

Artikeln behandlar de många kollektiva aspekterna av rättsystemet i det tidigmedeltida Norge. Undersökningen har baserats på tre av de tidigaste norska lagarna: Gulatingslagen, Frostatingslagen samt Kung Magnus Lagaböters landslag. Dessa lagar representerar olika tidsfaser och visar därmed hur rättsystemet förändrades. De kollektiva aspekterna är starkast i Gulatingslagen och blir gradvis svagare i de två senare lagarna.

Det är viktigt att lyfta fram lagarnas kollektiva drag eftersom tidigare forskning om landskapslagarna till stor del har fokuserat på de regler som rör individen. Anledningen till detta var att man ville visa hur det medeltida samhället skilde sig från det kollektiva förhistoriska, vilket har resulterat i att de många kollektiva dragen i lagarna har ignorerats.

I artikelns inledning förklaras konceptet om "allmän kännedom", en av grundstenarna i tidig skandinavisk lag. Detta innebar att alla juridiska ärenden skulle offentliggöras. Vid exempelvis mord eller misshandel skulle den skyldiga kungöra sin gärning. Den utsatta måste också kungöra handlingen som ett brott gentemot sig. Samma princip gällde uppgörelser av olika slag; dessa skulle träffas i vittnens närvaro. Om parterna senare blev oense om termerna i överenskommelsen kunde vittnena kallas in. Den äldsta varianten som beskrivs i Gulatingslagen var en mycket komplicerad

procedur som krävde ett stort antal vittnen. Med tiden minskades emellertid antalet vittnen till två, vilket kan ses som en utveckling mot ett samhälle mer inriktat på individen.

En av konsekvenserna av konceptet om allmän kännedom var att alla överenskommelser blev offentliga och på så vis allas egendom. En annan var att brott som begicks i det fördolda, som t.ex inbrott, räknades bland de grövsta brotten man kunde begå. Något som ytterligare bidrog till den allmänna kännedomen om gärningar och överenskommelser var att det inte fanns någon ordningsmakt. Istället var befolkningen förpliktigad att hjälpa till, exempelvis med att assistera biskopens män vid bötesindrivning.

I de tidigaste lagarna tillämpades både kollektiv skuld och kollektiv bestraffning. Som exempel kan Gulatingslagens regler om mord på en ölfest ges. Enligt lagen var alla närvarande förpliktigade att hitta den skyldiga. Om de inte lyckades, var de förpliktigade att betala full ersättning till den dödas släkt samt till kungen. Med tiden togs detta bort och i Frostatingslagen var det istället arvtagarens ansvar att anklaga den skyldiga. Man blev man alltså mer och mer inriktad på att hitta en enda person som kunde hållas ansvarig för brottet. Detta orsakades troligtvis av kristendomens inflytande. I de tidigaste lagarna tillämpades även kollektiv bestraffning, exempelvis gatlopp, där befolkningen fick kasta sten på den som dömts av tinget.

En annan kollektiv aspekt var själva tingsförhandlingarna. Ända fram till slutet av 1200-talet togs rättsliga beslut gemensamt av ett stort antal människor. De lokala och regionala tingsmötena var allting, dvs. alla fria män var förpliktigade att närvara och skulle tillsammans enas om domen. För att den skulle få största möjliga genomslag var det viktigt att få så många som möjligt att komma överens. Till den högsta instansen, lagtinget, utvaldes ett antal lagtingsmän. Enligt den äldsta versionen av Gulatingslagen skulle det finnas 400 lagtingsmän. Antalet minskades med tiden och i Magnus Lagaböters landslag var antalet nere i 148. Enligt samma lag var det sedan 36 *lögréttumenn* som skulle enas om domen. Resten av lagtingsmännen skulle enbart godkänna domen genom att skramla med sina vapen (*vápnatak*). Det är oklart om det fanns *lögréttumenn* i de tidigare lagarna. Det är alltså möjligt att domarna i det tidigaste skedet skulle fastställas av samtliga 400 lagtingsmän.

Det är naturligtvis svårt att veta om domar och beslut var kollektiva även i praktiken, eller om kungens män (dvs. årmän, lendmän och sysslomän) påverkade tingsförhandlingarna. Detta verkar dock inte ha varit fallet. Kungens män hade vissa formella förpliktelser i samband med tinget, men var förbjudna att delta i själva tingsbesluten. Det verkar alltså som om bönderna hade en ganska stark position i det tidigaste skedet. Detta verkar dock ha förändrats i och med lagmannens ökade inflytande. I tidig medeltid skulle lagmannen enbart läsa upp lagen och ge *órskurðr*,

dvs. förklara hur lagen förhöll sig till de fall som tagits upp på tinget. Med tiden blev lagmannen en kungens man och hans *órskurðr* fick gradvis karaktären av en dom. På 1260-talet hade lagmannen blivit en erkänd domare.

En annan viktig utveckling var införandet av *sáttmál*. Detta innebar att fall där lagens hållning var klar kunde avgöras direkt av kungens eller biskopens män, utan att ett tingsmöte behövde kallas. Dessa män blev alltså i praktiken domare. Det verkar som om kungen började stödja denna praxis från slutet av 1200-talet. Enligt Magnus Lagaböters landslag kunde kungen dessutom bryta lagmannens *órskurðr*. Utvecklingen mot ett rättsystem mer fokuserat på individen kan även tydliggöras genom en jämförelse med kristenrätterna. Dessa innehåller inga förordningar om kollektiv skuld eller bestraffning. Straffen kunde ofta utgöras av personlig botgöring. Det står således klart att många av reglerna i de andra kapitlen av landskapslagarna kom från sedvanerätten, och bara gradvis förändrades för att passa det kristna samhället.

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